No. 6540

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

In the Matter of
ROUTT LUMBER COMPANY (a corporation),
Bankrupt.

STANDARD PLANING MILL (a corporation),
Appellant,

vs.

PACIFIC COAST PAPER COMPANY, PACIFIC PORTLAND CEMENT COMPANY, SLOSS & BRITTAIN, and A. HOLM, assignee of Redwood Manufacturers Company, WENDLING-NATHAN COMPANY and SUGAR PINE LUMBER COMPANY, LTD.,
Appellees.

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BRIEF FOR APPELLEES.

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STATEMENT OF CASE.

The major question in controversy submitted on this appeal is *not* whether the Routt Lumber Company and the appellant Standard Planing Mill are one and the same and *alter ego* each of the other as is stated on page 4 of appellant's brief, but on the contrary is whether the evidence was sufficient to support the order of the District Court extending the receivership.

STATEMENT OF FACTS.

The statement of facts as set forth in appellant's brief is only partially correct. The petition filed on behalf of the petitioning creditors of the alleged bankrupt, Routt Lumber Company, on April 14, 1931, did not seek to enjoin the prosecution of the action theretofore filed in the Superior Court of the State of California, in and for the County of Fresno, in which L. W. Ellis was plaintiff and the appellant Standard Planing Mill was defendant, but sought only *to enjoin the proposed execution sale* under the default judgment secured by the plaintiff, L. W. Ellis, against the appellant, Standard Planing Mill. (R. p. 4.)

At the hearing before Hon. Paul McCormick sitting in the District Court at its regular session in the City of Fresno held on April 28, 1931, the issue presented by the petition for injunction was whether the Routt Lumber Company, the alleged bankrupt, and the appellant, Standard Planing Mill, were to be considered as one entity.

The argument presented by the judgment creditor, Ellis, was in effect by way of demurrer to the petition for injunction on the grounds that the petition in involuntary bankruptcy (to which he then directed the Court's attention) alleged acts of bankruptcy consisting of transfers by the Routt Lumber Company to the Standard Planing Mill, thereby of itself recognizing the appellant, Standard Planing Mill, as an entity, separate and distinct from the Routt Lumber Company. The inconsistent allegations of these two separate petitions were thus placed squarely before the Court.

That such a transfer from a corporation to itself under another name would not be an act of bankruptcy is obvious. Had the District Judge held in the petition before him that an injunction should issue, he would at the same time have had to anomalously rule that under the other petition there was no bankruptcy. The District Judge thereupon refused to issue the injunction, and in effect sustained appellant's demurrer to the petition for injunction.

He therefore did not hear or determine fully, or at all, any of the allegations set forth in the petition for injunction.

Immediately thereafter on April 28, 1931, in order to eliminate inconsistent allegations, and upon the ground that subsequent to the filing of the original petition they had obtained information leading them to believe that the appellant Standard Planing Mill and the Routt Lumber Company were the *alter ego* and business conduit one of the other, the petitioning creditors petitioned the District Court for permission to amend the original petition in involuntary bankruptcy against the Routt Lumber Company so as to allege other acts of bankruptcy in addition to those alleged in the original petition. On June 5, 1931, the United States District Court, after hearing had thereon, permitted such amendment. (R. pp. 35 and 36.) *This important procedural step is entirely omitted in appellant's "Statement of Facts."* It is important because this amended petition was brought squarely to the attention of the District Court when it made its order extending the receivership, which is the order now on appeal.

ARGUMENT.

We preface our argument herein with the following pertinent statement from Volume 2 *Cal. Juris.*, page 931, paragraph 547:

> "It has been contended that the rule of 'conflict' does not apply where the evidence is documentary, and that in such case the appellate court should weigh and measure it by the same standard that the trial court is required to apply. *But in view of the fact that one of the reasons for the rule is the essential distinction between the trial and appellate courts as to their functions to decide questions of fact, such a contention is untenable, and it has been so held.* Therefore, in consideration of an appeal from an order made upon affidavits, which involves the decision of a question of fact, the appellate court is governed by the same rule which controls it where oral testimony is presented for review. *If there is any conflict in the affidavits, those in favor of the prevailing party must be taken as true, and the facts therein stated must be taken as established.*" (Italics ours.)

POINT I.

THE ALLEGATIONS OF THE PETITION WERE CLEARLY ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE.

Admittedly, the burden of proof was upon the appellees, and the record discloses that they not only met this burden successfully, but, by a preponderance of the evidence, established each allegation of their petition to extend the receivership of the Routt Lumber Company over the assets of the Standard Planing Mill.

The affidavits in opposition to the petition to extend receivership were made, as is stated in appellant's brief (p. 7), by officers, employees and stockholders of the appellant corporation, all of whom should have been familiar with the records, business and affairs of the appellant, and also undoubtedly financially interested as to the outcome of the petition, and for this reason entitled to little if any credence. The affidavits of A. E. Callahan (R. p. 29), H. W. Hills (R. pp. 30 and 53) and Betty Pohl (R. p. 56), do not mention anything with reference to the separateness and distinctiveness of the stockholders and officers of the two corporations, notwithstanding the statement in appellant's brief to the contrary.

The affidavits in support of the allegations of the petition on the other hand, were made by:

(a) C. W. Krumbholz, the Receiver of the alleged bankrupt, Routt Lumber Company, who has been in active charge of the Routt Lumber Company since his appointment as such Receiver on April 14, 1931, to and including the present date, and who, *prior* to his appointment as such Receiver, had possession and supervision of the books of both the Routt Lumber Company and the appellant Standard Planing Mill for a period of over one month. (R. p. 11, Par. III.)

(b) Oliver M. Weed, a certified public accountant, and a member of the firm of Hood and Strong, certified public accountants, who examined the books of accounts and ledgers of both companies (R. p. 61) and who was not, as is stated in appellant's brief (p. 9) employed as an auditor by the Receiver. The firm of Hood and Strong was employed by the appel-

lees herein and it is respectfully submitted that Mr. Weed's affidavit is entitled to the greatest credence as a disinterested witness.

(c) William T. Doyle, one of the attorneys for the appellees. (R. p. 13.)

These affidavits prove the following facts, which are more specifically set forth in the petition to extend receivership. (R. p. 35.)

(a) That Virgil S. Routt is the vice-president of the Routt Lumber Company, and also the vice-president of the appellant Standard Planing Mill, and that Leonard W. Routt is the secretary of the respective corporations, and that both of these officers have held their respective offices since prior to March, 1929. (R. p. 16, Par. 7.)

(b) That from September, 1924, until March 3, 1931, the Routt Lumber Company owned and voted over two-thirds of the capital stock of the appellant Standard Planing Mill, and from December, 1928, was purchasing on a contract of sale from M. D. Bishop all of the remaining issued shares of the capital stock of the appellant Standard Planing Mill and received dividends on all the stock and exercised complete control over the affairs of the Standard Planing Mill. (R. p. 37, Par. e.)

(c) That the transfers by the Routt Lumber Company of the capital stock of the appellant Standard Planing Mill to W. E. Opie and Builder's Finance Company *on March 3, 1931,* are two of the acts of bankruptcy of the Routt Lumber Company alleged in the amended petition in involuntary bankruptcy.

(R. p. 37, Par. e.) We specially direct the attention of this Honorable Court to this fact in view of appellant's statement in his brief on page 7, paragraph b. All of the matters and things referred to in the petition to extend receivership deal primarily with a period of time commencing December, 1928, and ending March, 1931.

(d) That the properties and assets of both the Routt Lumber Company and the appellant Standard Planing Mill are, in the main, situate on the premises of the Routt Lumber Company in the City of Fresno, and are so intermingled and confused so as to make it impossible to segregate to each corporation what apparently belongs to it. (R. p. 58, Par. IX; R. pp. 11 and 12, Par. IV.)

(e) That the Routt Lumber Company was in an insolvent condition from January, 1931, to June 22, 1931, and while in such insolvent condition purchased certain materials; that these materials were transferred and presumably sold to the appellant Standard Planing Mill but at the same price for which they were purchased by the Routt Lumber Company; that no commission was charged to the Standard Planing Mill on such purchases; that the greater portions of these items are listed in the inventory of the appellant Standard Planing Mill and are in its possession. (R. pp. 62 and 63, Par. 4; R. pp. 37-40, pars. g to m, inc.; R. p. 59, pars. a to e, inc.)

(f) That the personal property of the appellant Standard Planing Mill situated on the premises of the Routt Lumber Company in Fresno, was insured

against fire, and that such insurance was carried in policies payable to "Routt Lumber Company and/or Standard Planing Mill"; that the premiums on such policies of insurance covering the properties of the Standard Planing Mill were paid by the Routt Lumber Company, but that the Standard Planing Mill never paid the Routt Lumber Company any part, much less its proportion of such premiums. (R. p. 62, Par. c.)

(g) That appellant Standard Planing Mill and the alleged bankrupt, Routt Lumber Company, have the same office and place of business in the City of Fresno, County of Fresno, in the same buildings, use the same office furniture and fixtures and the same telephone, and that the Routt Lumber Company owns such office, place of business and buildings, but that the appellant Standard Planing Mill has not, since 1928, paid any rent to the Routt Lumber Company for its use of the telephone and its use and occupancy of the office and buildings and premises. (R. p. 36, Par. b; p. 58, Par. 7.)

(h) That the alleged bankrupt, Routt Lumber Company, has, from the period of December, 1928, until March 3, 1931, paid all personal property taxes of the appellant Standard Planing Mill to the county assessor of the County of Fresno, State of California, and all its telephone and water bills, and that the appellant Standard Planing Mill has not been billed for, nor has it reimbursed the Routt Lumber Company for its or any proportion of the payments made as aforesaid. (R. p. 36, Par. c; p. 58, Par. 8; p. 62, Par. b.)

(i) That the appellant Standard Planing Mill is conducting no business operation, and has no employees to take care of its assets and properties. (R. p. 41, Par. VIII.)

(j) That since March 20, 1931, and at all of the times mentioned in this proceeding the properties and assets of the appellant Standard Planing Mill were in the hands of the Sheriff of Fresno County under a writ of attachment issued in a suit instituted by A. Holm, one of the appellees herein. (R. p. 40, Par. VI).

In appellant's brief (p. 9), the following statement is made:

> "Surely, the fact that two separate corporations, engaged in allied industries, one in the raw product and the other in the manufactured product, share the same quarters is not sufficient ground to declare them to be one and the same * * *."

Whether we assume the Routt Lumber Company to be the dealers in the raw product and the appellant Standard Planing Mill to be the dealers in the manufactured product, or vice versa, the fact remains that both companies dealt in the same products, whether they were manufactured products or raw products.

If appellant contends that it was the dealer in the raw product, it is incumbent upon it to explain its billheads as set out in Exhibit B in the Transcript of Record (opposite p. 52), in which they list manufactured products only.

If, on the other hand, the appellant Standard Planing Mill is dealing in manufactured products only, it requires explanation as to why the Routt Lumber Company purchased manufactured materials in its name, while insolvent, from certain dealers and then transferred these products at the same price it paid for them to the appellant Standard Planing Mill. (R. p. 38, Pars. g to m, inclusive; p. 59, Par. 11; p. 62, Par. 4.)

The Honorable Court is also requested to compare the statement of Leonard Routt in his affidavit of June 23, 1931 (R. p. 65), wherein he states "That the Standard Planing Mill has located in the mountains east of Fresno a saw mill, and that said planing mill has therewith cut and sawed lumber, and it has delivered the same to its yards in the City of Fresno," with the letterhead of the Routt Lumber Company (Transcript of Record, p. 52, Exhibit B), on which the following statement appears:

"SAW MILL"

under which is the statement:

> "Our saw mill at Pine Ridge manufactures lumber in all lengths and sizes."

This Court can take judicial notice of the fact that "Pine Ridge" is "located in the mountains east of Fresno"—the same saw mill.

It plainly appears, therefore, from the affidavits in support of the petition to extend receivership that the evidence was overwhelming in sustaining the allegations contained in the petition.

POINT II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW WERE NOT REQUIRED.

A. The proceeding before this Court is a "controversy in bankruptcy" and not a summary proceeding in equity.

A "controversy in bankruptcy" has been defined so many times by the Supreme Court of the United States and by this Honorable Court that a citation of authority is hardly necessary to show that we are confronted with a "controversy in bankruptcy" and not by a summary proceeding in equity.

An appeal from a "controversy in bankruptcy" lies to this Honorable Court by virtue of Section 24 a of the Bankruptcy Act of July 1, 1898 (11 U. S. C. A. No. 47a).

Handlan v. Bennett (C. C. A. 4th), 51 Fed. (2d) 21.

The rule is well stated in *Borland v. Central Trust Company of Illinois,* 216 Fed. 878 (certiorari denied), 235 U. S. 701; 59 Lawyers Ed. 432:

> " 'Controversies at law and in equity arising in the course of bankruptcy proceedings' involve questions between the receiver or trustee representing the bankrupt and his general creditors, as such, on the one hand, and adverse claimants on the other, concerning property in the possession of the receiver or trustee or of the claimants, * * *"

See also *Brady v. Bernard and Kittinger,* 170 Fed. 576 (C. C. A.), (certiorari denied), 217 U. S. 595; 54 Lawyers Ed. 896, wherein it is stated, referring to Section 24a of the Bankruptcy Act above set forth:

> "The 'controversies arising in bankruptcy proceedings' referred to in this section, as has been heretofore held by this Court, are 'those independent or plenary suits which concern the bankrupt's estate, and arise by intervention or otherwise between the trustee representing the bankrupt's estate and claimants asserting some right or interest adverse to the bankrupt or his general creditors,' * * *"

Section 64b (2), Bankruptcy Act of July 1, 1898 (11 U. S. C. A. 104b (2)), *permits a creditor to maintain a proceeding similar to the one presented herein.* In this behalf, attention is directed to the case of *Frost v. Latham & Co.* (C. C. A.), 181 Fed. 866, the syllabus of which reads as follows:

> "Bankr. Act July 1, 1898, c. 541, S. 64b (2), etc., providing for payment from the estate of a bankrupt of the reasonable expense of the recovery of property transferred by the bankrupt either before or after the filing of the petition 'by the efforts and at the expense of one or more creditors,' impliedly recognizes the right of a creditor to maintain a suit to set aside transfers of property by the bankrupt to third parties either actually fraudulent or preferential, and on the election of a trustee pending such a suit he is entitled to become a party plaintiff therein."

Appellant makes the point that the petition in this matter was not filed by the Receiver of the Routt Lumber Company in aid of his receivership, but on the contrary was filed by the appellees as creditors.

Attention is called to the fact that no objection was made to this form of procedure in the District Court,

but whether the suit was brought by the Receiver or by the creditors is immaterial, since the sole purpose of the suit was and is to preserve the property of the bankrupt's estate. The creditors did not seek in this proceeding to take the property themselves, but sought to have the District Court place property belonging to the bankrupt in the possession of the Receiver. This method of proceeding is given to creditors as a matter of right under the provisions of subdivision 3 of paragraph 2 of the Bankruptcy Act of 1898. (Title 11, No. 11, U. S. C. A.)

The appellant submitted itself to the jurisdiction of the District Court, and, under the decisions in the cases of *In Re Rieger, Kapner & Altmark,* 157 Fed. 609, and *In Re Muncie Pulp Company,* 139 Fed. 546, the District Court was acting within its jurisdiction in extending the receivership.

B. The District Court was not required to base its order of June 29, on findings of fact and conclusions of law.

Equity Rule Section 70½, is not applicable to an appeal in a bankruptcy proceeding instituted under 11 U. S. C. A. Section 24a.

The General Orders in Bankruptcy contain no provision requiring a Court of Bankruptcy to make findings of fact and conclusions of law, nor do the rules of the United States District Court for the Southern District of California so require.

It is true that General Order in Bankruptcy No. XXXVI provides that appeals from a Court of Bankruptcy to a Circuit Court shall be regulated by the rules governing appeals in equity cases, but Section

70½, Equity Rules, above referred to provides primarily that in *deciding suits in equity* the lower Court shall find the facts, etc.

The only rules which are applicable to appeals from a Bankruptcy Court are Equity Rules 75, 76 and 77, and there is nothing contained in those rules requiring findings of fact and conclusions of law by the lower Court in bankruptcy.

Section 70½, Equity Rules, and General Order in Bankruptcy No. XXXVI, were both promulgated separately by the United States Supreme Court, and it is impossible to read into the General Orders in Bankruptcy the rules governing a Court of equity so as to require a Court of Bankruptcy to find facts specially and to state separately its conclusions of law thereon.

POINT III.

A. The Routt Lumber Company and appellant Standard Planing Mill were the alter ego and business conduit of one another.

While every case is an individual problem and must rest on its own base, there are four essential factors to be considered by a Court in determining whether or not distinct corporate entity will be recognized. (*Anderson, "Limitations of Corporate Entity"* (1931), page 64.)

These four factors are listed below and compared with the facts in the instant case.

(1) Ownership of stock by one corporation in another or identity of stockholders:

In the instant case the Routt Lumber Company owned from September, 1924, to March, 1931, two-thirds of the capital stock of the appellant Standard Planing Mill, and from December, 1928, was purchasing *all* the remaining shares under a contract of sale.

(2) Identity of directors and officers:

In the instant case, Virgil and Leonard Routt were officers and directors of both companies. It is stated in the Record, page 49, "nor has the president of either of the companies ever been the president of the other." As a matter of fact neither company has had an acting, if any, president since December, 1928.

(3) The manner of keeping the books and records:

In the instant case we quote from the affidavit of Oliver M. Weed, certified public accountant (R. p. 62):

> "5. That the books of accounts and ledgers of the Routt Lumber Company, and of the Standard Planing Mill, were so closely inter-allied that an examination of the books of one company, without having access to the books of the other company, would, for most practical purposes, be unsatisfactory; that is to say, that in order to trace items transferred by the Routt Lumber Company it is necessary to have access to the books of the Standard Planing Mill and vice versa; that in our opinion, after such examination of the books made as aforesaid, the two companies, although they have kept separate books, are nevertheless one company.
>
> 6. That the books of accounts and ledgers of the Routt Lumber Company, and of the Standard

Planing Mill, and the entries therein are confusing and misleading, and that it is our opinion that such entries in said books of accounts and ledgers were purposely so entered."

(4) The method of conducting the business:

In the case at bar to take one of many instances, the Routt Lumber Company, while insolvent, purchased certain manufactured building materials on different dates from various firms; the Standard Planing Mill now has the materials so purchased in its possession; the Routt Lumber Company and Standard Planing Mill have the same bookkeeper (R. p. 56), and the same officers (R. p. 16), and the insolvency of the Routt Lumber Company must have been known to the Standard Planing Mill. To briefly summarize, the Routt Lumber Company makes the purchase and owes the money, the Standard Planing Mill takes and holds this property, but owes no money for it.

B. A Court will, in proper instance, cast aside the legal fiction of distinct corporate entity, irrespective of fraud or actual wrong doing.

In *all* of the cases cited in appellant's brief, the Courts recognize the *"alter ego"* doctrine, but for one reason or another, either because of the insufficiency of the evidence or because to do so would sanction fraud, refused to find that in those particular cases this doctrine was applicable.

The general rule is well stated in *Anderson's "Limitations of Corporate Entity"* (1931) (page 23), as follows:

"The modern rule is clearly established by the authorities beyond all question, that when a corporation is owned and controlled by a single individual, either a natural person or a jural creation, the rule that the corporation and the shareholders have a separate entity and existence can never be made use of for the purpose of evading responsibility, or as a means of distorting, or hiding the truth, or covering up transactions. * * * *The courts in all such cases look beyond a formal corporate difference into the real and substantial rights, rather than mere matters of organization.*" (Italics ours.)

See

7 *R. C. L.*, p. 27, Section 4;
Minifie v. Rowley, 187 Cal. 481;
U. S. v. Milwaukee etc. Co. (C. C. A.), 142 Fed. 247;
Day v. Postal Telegraph, 7 Atlantic 608;
Dillard etc. Co. v. Richmond etc. Co., 204 S. W. 758.

It was not necessary for the appellees to plead actual fraud, although in the instant case, while fraud is not pleaded in so many words, it is self-evident from the pleadings that fraud, or at least very bad faith to the creditors exists.

Ury v. Van Every, 181 Cal. 604, was a case in which the trustee in bankruptcy was suing to declare a certain transfer in trust void as to the creditors of the bankrupt. In the complaint, fraud was not pleaded. The Court states that if the property belongs to the bankrupt, the fact whether he transferred it with in-

tent to deceive or not was immaterial, and further states as follows:

> "The pleading of actual fraud, therefore, does not alter the essential characteristics of the action. Whether the trust be considered voluntary or involuntary, the officer having control of the bankrupt's estate would be entitled to conveyances or assignments."

See also 1 *Remington on Bankruptcy,* page 455, wherein the following statement is made:

> "And receiverships over bankrupt corporations have been extended to cover the property and affairs of other corporations which were mere departments of the bankrupt corporations or whose business has been so intermingled with that of the bankrupt corporation's as to warrant the ignoring of the fiction of corporate entity."

In *In Re Rieger, Kapner and Altmark,* 157 Fed. 609, the District Court, upon the petition of the creditors, extended the receivership in an involuntary bankruptcy proceeding against a partnership so as to include the assets of a corporation in which the partners held stock. In this case the partners owned a majority of the stock, the remaining shares being held by relatives of one of the partners.

The rule stated in the syllabus is as follows:

> "The doctrine of corporate entity is not so sacred that a court of equity, looking through forms to the substance of things, may not in a proper case ignore it *to preserve the rights of innocent parties* or to circumvent fraud." (Italics ours.)

In this same case the Court, in speaking of the two companies involved as to their method of operation, states:

> "This is as unusual as it would be for a natural person, doing business in his correct name, to designate himself, or contract with himself, as his own agent regarding another branch of his business conducted by himself under a fictitious name, and to hold himself out to the public as two distinct persons. *That he should so represent himself and keep for his two kinds of business separate books and separate bank accounts might give him a double line of credit, and might hinder and delay his creditors in reaching his assets in case of insolvency,* but a court of equity, having knowledge of the fact, would have no difficulty in brushing aside the subterfuge, and subjecting the whole of his property to the payment of his debts." (Italics ours.)

Appellant lays much stress upon the case of *Finn v. Mickle Lumber Company* (C. C. A.), 41 Fed. (2d) 676. This case was submitted to the referee in bankruptcy and to the District Court on an agreed statement of facts, which facts are not analogous to the case at bar. In speaking of the facts as they were stipulated, the Court states:

> "but fraud cannot be implied from the stipulated facts so long as corporations are permitted by law to organize and conduct their businesses in the manner here disclosed."

Appellees take exception to the loose quotation by appellant in his citation from the case of *Finn v.*

Mickle Lumber Company, supra, appearing on page 15 of his brief, and his loose quotation from the case of *Erkenbrecher v. Grant,* 187 Cal. 7, appearing on page 12 of his brief. In the *Finn* case appellant quotes from another case cited therein and not, as he states, from the case itself, and a portion of the quoted opinion in the *Erkenbrecher* case is taken from another case entirely, and is quoted in appellant's brief as being part of the Court's decision. Such garbled quotations might well merit the criticism of Lord Manners in *Revel v. Hussey,* 2 Ball and B. 286, to the effect that "it has a tendency only to misrepresent one judge and mislead another."

POINT IV.

IRRESPECTIVE OF THE ALTER EGO THEORY, THE DISTRICT COURT ACTED WITHIN ITS JURISDICTION IN EXTENDING THE RECEIVERSHIP.

The powers of a court of bankruptcy are generally defined in Section 2 of the Bankruptcy Act of 1898 (Title 11, Section 11, U. S. C. A.). We particularly direct the attention of this Court to subdivision 3 of this section reading as follows:

> A court of bankruptcy has original jurisdiction to "appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified."

An excellent discussion of this section is found in *Bryan v. Bernheimer,* 181 U. S. 188; 45 Lawyers Ed. 814. The syllabus of this case reads in part as follows:

> "Property of a bankrupt in the hands of third persons is included within the provision of the bankrupt act of 1898, S. 2, cl. 3, giving the court of bankruptcy authority to appoint receivers or the marshals to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified, when that is absolutely necessary for the preservation of estates."

In *Mueller v. Nugent,* 184 U. S. 1; 46 Lawyers Ed. 405, the language of the Court, in discussing a situation similar to the instant case, is very much in point, and the opinion by Mr. Chief Justice Fuller well worth reading. We therefore quote at length from the opinion on page 411:

> "In other words, the question reduces itself to this: Has the bankruptcy court the power to compel the bankrupt or his agent to deliver up money or other assets of the bankrupt, in his possession or that of some one for him, on petition and rule to show cause? Does a mere refusal by the bankrupt or his agent so to deliver up oblige the trustee to resort to a plenary suit in the circuit court or a state court, as the case may be?
>
> If it be so, the grant of jurisdiction to cause the estates of bankrupts to be collected, and to determine controversies relating thereto, would be seriously impaired, and in many respects rendered practically inefficient.

> The bankruptcy court would be helpless indeed if the bare refusal to turn over could conclusively operate to drive the trustee to an action to recover as for an indebtedness, or a conversion, or to proceedings in chancery, at the risk of the accompaniments of delay, complication, and expense, intended to be avoided by the simpler methods of the bankrupt law.
>
> It is as true of the present law as it was of that of 1867, that the filing of the petition is a 'caveat' to all the world, and in effect an attachment and injunction, * * *''

A case directly in point is *In Re Muncie Pulp Co.* (C. C. A. 2d), 139 Fed. 546. This case is not only authority for the point that a District Court has jurisdiction to order property of a bankrupt in the possession of a third person delivered into the custody of the receiver, but is also direct authority on the point that a Court of Bankruptcy has the inherent power to override the fiction of corporate entity. In this case the Circuit Court upheld the order of the District Court extending the receivership of a bankrupt corporation so as to include the assets of another corporation. Referring to the order of the District Court, the Circuit Court states:

> ''The Court had jurisdiction to order the property of the bankrupt, in the possession of a bailee or agent, delivered into the custody of the receiver pending the appointment of a trustee.''

CONCLUSION.

In consideration of the foregoing, it is respectfully submitted that:

(1) The evidence was and is sufficient to sustain the order of the District Court.

(2) The District Court was not required to base its order on findings of fact and conclusions of law.

(3) The District Court had and acted within its jurisdiction as a Bankruptcy Court in extending the receivership.

Dated, San Francisco,
March 2, 1932.

Respectfully submitted,
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